IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.O.C.P. No.1354 of 2004
Date of Decision:- 06.11.2006

Jagir Kaur ....Petitioner

through
Mr.Sapan Dhir, Advocate

vs.

Jarnail Singh & ors. ....Respondents

through
Mr.B.S.Bhalla, Advocate for No.1.
Mr.G.S.Sandhawalia, Advocate for No.2.
Mr.V.K.Shukla, Advocate for No.3.

***

CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

1.Whether Reporters of local papers may be allowed to see the judgment?
2.To be referred to the Reporters or not?
3.Whether the judgment should be reported in the Digest.

***

SURYA KANT, J.

This contempt petition has been filed, *inter alia,* alleging that despite an order dated January 11, 2002 passed by this Court in R.S.A.No.159 of 2002 (Annexure P-1) whereby respondent No.1 was "restrained from alienating or encumbering the suit property in any manner during the pendency of the appeal", he has sold a part thereof by way of two registered sale deeds dated 18.5.2004, copies of which have been appended as Annexure P-2 and P-3.

[2] In addition to respondent No.1, against whom the above-stated restraint order was passed by this Court, respondent Nos.2 and 3 have also

been impleaded, who are the Sub-Registrar and Halqa Patwari alleging that they ought not to have facilitated the registration of the above-stated sale deeds in violation of the orders of this Court.

[3] A brief reference to the facts may be made. The petitioner is an old widow, who filed a civil suit for declaration and possession against respondent No.1 claiming that she is owner of 5/12th share out of land measuring 289 kanals 1 marla situated within the revenue estate of village Kokri Kalan Janubi (Kokri Kalan Tehsil & Distt.Moga).

[4] Respondent No.1 contested the above-stated suit on the plea that he was in fact adopted by the petitioner (plaintiff in the suit) while her husband was still alive. The trial Court vide judgment and decree dated 21.12.1991 decreed the petitioner's suit. However, respondent No.1 filed an appeal which was allowed by the learned Additional District Judge, Moga vide judgment and decree dated 18.10.2001 and, thus, the suit filed by the petitioner was dismissed.

[5] Aggrieved, the petitioner filed Regular Second Appeal No.159 of 2002 in which the following interim order dated January 11, 2002 was passed by this Court in the presence of learned counsel for respondent No.1.

> "Heard at length.
>
> Admitted.
>
> The respondent is restrained from alienating or encumbering the suit property in any manner during the pendency of the appeal.
>
> At this stage, Mr.Sibal states that the petitioner is over 80 years of age and she is not keeping good health and, therefore, prays that the appeal be set down for hearing

on an early date.

In view of the above, the appeal is directed to be listed for final hearing on 8.5.2002."

[6] There is no denial to the fact that the above-stated interim order is still operative.

[7] Notwithstanding the above-stated restraint order, respondent No.1 sold a part of the land measuring about six acres vide two registered sale deeds dated 25.3.2004. This led the petitioner to file C.O.C.P.No.576 of 2004 in which after issuing show cause notice to respondent No.1 and other respondents, it was ordered to be heard along with R.S.A.No.159 of 2002 and is, thus, still pending.

[8] Apparently, with a pre-meditated mind to defeat the very object behind filing of the Appeal and/or to frustrate the final outcome thereof, respondent No.1 has further sold a part of the suit land by way of two registered sale deeds dated 18.5.2004 (Annexures P-2 and P-3) which are the subject matter of these contempt proceedings.

[9] Show cause notice was issued and thereafter vide an order dated 10.5.2005,the first respondent was directed to remain present in person in Court. He, however, did not turn up, therefore, bailable warrants were issued to secure his presence. As the record speaks for itself, respondent No.1 firstly tried to evade the execution of the bailable warrants and thereafter did not appear despite the execution thereof. Consequently, bailable warrants were again issued to secure his presence. However, despite repeated orders, he remained absent which compelled this Court to issue non-bailable warrants against him vide order dated August 21, 2006.

A direction was issued to the Senior Superintendent of Police, Moga and S.H.O. of the concerned police station to take respondent No.1 in to custody and produce him firstly before the Illaqa Magistrate and thereafter before this Court.

[10] It was only thereafter that the first respondent appeared before this Court and filed his defence affidavit dated 12.10.2006. Strangely, the only plea taken by him in the aforesaid affidavit is that the learned counsel through whom he had filed the caveat petition and who was present at the time when interim order dated January 11, 2002 was passed by this Court, did not inform him about the said interim order.

[11] Respondents No.2 and 3 have filed their respective affidavits. Respondent No.3 in his affidavit stated that on receipt of the certified copy of the order dated January 11, 2002, he had made an entry in the revenue record vide Rapat No.113 dated 22.11.2003. Similarly, respondent No.2 has deposed that the sale deeds in question were not registered by him at all.

[12] I have heard learned counsel for the parties at length and perused the record.

[13] There is no denial to the fact that respondent No.1 had entered a caveat and his counsel was duly heard by this Court when the interim order dated January 11, 2002 (Annexure P-1) was passed in R.S.A.No.159 of 2002.

[14] It is, therefore, too late for respondent No.1 to contend that he had no knowledge of the above-stated order or the same was not communicated to him by his learned counsel. That apart, the above-stated order stood duly incorporated in the revenue record on 22.11.2003. It was not possible for respondent No.1 to execute any sale deed without getting

any certified copy of the revenue record. Thus, the plea taken by respondent No.1 that he had no knowledge of the above-stated order being false and an afterthought, is rejected.

[15] So far as wilful and deliberate violation of the above-stated order dated January 11, 2002 is concerned, learned counsel for respondent No.1 is totally defenceless: It is not denied that initially about six acres of land was sold by respondent No.1 by way of registered sale deeds dated 25.3.2004 which led the petitioner to file COCP No.576 of 2004. Thereafter, he has executed two more sale deeds dated 18.5.2004 (Annexures P-2 and P-3). The subject property, thus, had been alienated by him knowing fully well that he has been restrained from doing so by this Court vide order dated January 11, 2002. I accordingly hold that respondent No.1 has wilfully and deliberately breached the above-stated interim order passed by this Court and thus, he is guilty of committing "Civil Contempt" as defined in Section 2(b) of the Act.

[16] However, as far as respondent Nos.2 and 3 are concerned, in my view, no case of violating the Court orders, is made out against them. Respondent No.3-the Patwari, has already made entry in the revenue record of the orders passed by this Court and nothing more was required to be done by him. Similarly, respondent No.2 is not the person who registered the sale deeds. Consequently, the proceedings against respondent Nos.2 and 3 are dropped.

[17] Learned counsel for respondent No.1 has been duly heard on the quantum of punishment also. As requested by him, the case was adjourned twice to enable respondent No.1 to find out the modalities to purge the contempt. The learned counsel did suggest one of the solutions

i.e. transfer of equal piece of land by respondent No.1 in favour of the petitioner to which learned counsel for the petitioner also did not put up any resistance. Respondent No.1, however, has backed out from the same. He is merely harping upon the unconditional apology which too appears to be nothing more than the crocodile tears. He has shown no sign of repentance, rather his past conduct of non-appearance before this Court proves beyond doubt that he has scant respect for the Court or its orders. The same is accordingly rejected.

[18] There are two glaring circumstances which this Court has to keep in view while awarding suitable punishment to Respondent No.1. He is guilty not only of hoodwinking the process of law but also of dragging a hapless widow of more than 80 years old to whom he claims his "adopted mother", to undesirable rounds of litigation. The fact that the interim order has been repeatedly violated by respondent No.1, is yet another factor which compounds his misconduct.

[19] On a consideration of all the attending facts and circumstances, I am of the considered view that respondent No.1 deserves to be severally punished and accordingly I convict him under Section 12 of the Act and sentence him to undergo simple imprisonment for a term of three months in addition to the fine of Rs.2,000/-. It is further directed that in the event of non-deposit of the fine on or before 31st December, 2006, the respondent No.1 shall further undergo one month's simple imprisonment. Respondent No.1 is directed to surrender before the Chief Judicial Magistrate, Moga to undergo the above awarded imprisonment. It is made clear that in case respondent No.1 does not surrender within 15 days of expiry of limitation period to file appeal, the learned Chief Judicial Magistrate, Moga shall issue

non-bailable warrants to take respondent No.1 into custody and there shall be a direction to Senior Superintendent of Police, Moga to execute these warrants forthwith. A compliance report shall also be submitted to this Court. The aforesaid order, however, shall remain in abeyance till the expiry of period of limitation prescribed for filing the appeal.

[20] The matter, however, does not rest here. Knowing the past conduct of respondent No.1 and the fact that four sale deeds have already been executed by him, despite the restraint order, the Collector, Moga as well as the Sub-Registrar, Moga are directed to ensure that henceforth no Sale-Deed in respect of the suit land shall be registered at the instance of respondent No.1.

[21] In order to ensure necessary compliance of this order by the Collector, Moga, let a copy of this order be handed over to Shri G.S.Cheema, learned Sr.DAG, Punjab.

November 06, 2006 **(SURYA KANT)**
poonam **JUDGE**